

Members:

Rep. Mark Kruzan, Chairperson
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
Sen. Kent Adams
Sen. Beverly Gard
Sen. Glenn Howard
Sen. Vi Simpson



Lay Members

Michael Carnahan
Randy Edgemon
John Fekete
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
John Hamilton
Stephen Hohman
Kerry Michael Manders
Gary Reding
Alice Schloss
David Rector
John Walker
Lynn Waters

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Authority: P.L.248-1996 (SEA 138)

ENVIRONMENTAL QUALITY SERVICE COUNCIL

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MEETING MINUTES

Meeting Date: August 13, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. Mark Kruzan, Chairperson; Rep. David Wolkins; Rep. Richard Mangus; Sen. Beverly Gard; Sen. Kent Adams; Sen. Vi Simpson; John Hamilton; Randy Edgemon; John Fekete; Marvin Gobles; Max Goodwin; Steve Hohman; Kerry Michael Manders; Gary Reding; Regina Mahoney.

Members Absent: Rep. Dale Sturtz; Sen. Glenn Howard; Mike Carnahan; Hon. Jack Fowler; William Goffinet; Alice Schloss; John Walker; Lynn Waters.

Representative Mark Kruzan, Chairperson of the Environmental Quality Service Council (EQSC), called the meeting to order at 1:54 P.M.

The first person to testify was John Hamilton, Commissioner of the Indiana Department of Environmental Management (IDEM). Mr. Hamilton distributed copies of his August

Commissioner's Report to the EQSC.¹ Mr. Hamilton said that the Report contained a map indicating locations in Indiana where IDEM had conducted outreach, education, and assistance activities during June and July, a chart listing various fees collected by IDEM, and information concerning recent rulemaking activities.

Mr. Hamilton also distributed several charts cornering permit applications and decisions² and a package of IDEM press releases from June, July, and August.³

Mr. Hamilton then introduced Judy Dicus Thomann, the new director of IDEM's Southwest Regional Office, and Erika Seydel, IDEM's new Legislative Director.

In response to questions from Representative Kruzan concerning IDEM staffing, Mr. Hamilton stated that while IDEM had reduced unfunded, empty positions, there were no plans to cut any current IDEM staff.

Representative Kruzan then asked Senator Adams to discuss the activities of the EQSC's Risk Integrated System of Cleanup (RISC) Subcommittee. Senator Adams said the Subcommittee met on June 10, 1998, and since that time a series of letters had circulated between IDEM and several interested parties concerning IDEM's RISC policy.

Mr. Hamilton said that IDEM's RISC policy was to set consistent standards for cleanups across the agency that would create more predictability while retaining regulatory flexibility. He said that this RISC policy was "a work in progress" and that dialogue was continuing.

The next person to testify was John Kyle from Barnes and Thornburg. Mr. Kyle said that IDEM's RISC policy was "critically important" for the State of Indiana because it was the key to cleaning up contaminated sites in the state, including Brownfield sites and other old industrial sites. However, he said that one of the main problems in creating a RISC policy is that "you never know how clean is 'clean enough.'" He stated that only sites that actually pose a risk should be cleaned up.

Mr. Kyle continued by stating he felt that IDEM's current RISC policy document was not consistent with such laws as the state voluntary remediation law.

Mr. Kyle said the IDEM RISC policy document is inconsistent with the voluntary remediation law because it does not allow applicants to substitute site specific values

¹This report is on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

²These charts are on file in the Legislative Information Center. See footnote 1.

³These press releases are on file in the Legislative Information Center. See footnote 1.

for default values in IDEM's standard equations and it does not allow the utilization of pure risk assessment based on site specific risk assessments.

Mr. Kyle also said the IDEM RISC policy document does not accomplish statutory mandates that require IDEM to ensure that remediation and closure goals, objectives, or standards for activities performed under the Resource Conservation and Recovery Act and underground storage tank laws are not inconsistent with the voluntary remediation law.

Mr. Kyle continued by stating that clean up caps employed by IDEM are arbitrary "non risk" policies that are inconsistent with true risk based clean up objectives and may not be related to the actual amount of risk that might be present at a clean up site. He also said IDEM's antidegradation of ground water policy did not employ true risk based remediation objectives.

Mr. Kyle concluded by stating that a true collaboration and dialogue had been missing from IDEM's process of formulating a RISC policy. He said he would like to see a "blue ribbon panel" formed to consider this issue.

Jeff Stant from the Hoosier Environmental Council stated that Mr. Kyle's ideas of a true risk based approach could result in a gross degradation of natural resources. Mr. Hamilton replied that it was important for RISC policy to establish a level of certainty. He said that RISC policy should incorporate known safe levels of pollutants while trying to accommodate a number of different interests.

The next person to testify was George Pendygraft representing the Indiana Gas Company. He stated that instead of creating a policy document, RISC should be issued as a rule. He stated that without formal rulemaking, the regulated community has been denied a meaningful opportunity to comment and has been denied due process. He also said that, without formal rulemaking, there will not be a proper economic impact analysis of IDEM's RISC policies.

In response to questions from Representative Kruzan, Mr. Hamilton said it has been his position to simplify rules by making them shorter and more clear. He said formal rules concerning RISC would create a huge new regulatory process in the Indiana Administrative Code. He also said there were questions about putting RISC into rigid rules that would be difficult to modify while the science and technology in this field was changing very rapidly.

The next person to testify was Larry Kane, Chairman of the Environmental Law Section of the Indiana State Bar Association. Mr. Kane also stated that there was a problem with statutory consistency concerning IDEM's RISC policies and there was a need for more public comment and participation.

Mr. Hamilton said that IDEM would be holding five RISC policy public meetings around Indiana in September.

The next person to testify was Chris Braun representing the Indiana Petroleum Marketers and Convenience Store Association. Mr. Braun said that the uniformity of IDEM's RISC policies had come at the expense of underground storage tank owners and operators. He said most of the underground storage tank owners and operators his Association represented were small, family owned businesses that could not keep up with the growing costs of regulation.

Mr. Braun continued by stating IDEM's "one size fits all" RISC policies were not truly risk based. Mr. Braun also stated that IDEM's environmental notice regulations for underground storage tank owners and other benefits of IDEM's RISC manual seemed to be outweighed by the increased costs and burdensome requirements imposed on underground storage tank owners.

Representative Kruzan asked IDEM to report back to the EQSC on the need to adopt a formal rule concerning IDEM RISC policies. Representative Kruzan then said the EQSC would discuss the current triennial review of water quality standards.

Mr. Hamilton said that there were three components to water quality standards. He said these components included water uses to be achieved and protected, water quality criteria that protect each designated use, and an antidegradation policy and methods to implement the policy.

Mr. Hamilton said the critical remaining issues for the current review included new narratives for biological criteria, numeric criteria for certain parameters (including parameters for mercury, arsenic, silver, and ammonia), special designation of water bodies, antidegradation methodology and implementation for all waters, nonpoint source issues, wet weather issues, and public participation opportunities.

Senator Gard then stated that the EQSC Triennial Review and Audit Privilege Subcommittee had met two time times and received considerable testimony. She said that Larry Kane representing business and industry, Scott Schutte representing municipalities, and Rae Schnapp representing environmental concerns would testify concerning triennial review.

Mr. Kane stated IDEM's antidegradation policies would result in better water quality than what is actually needed for many water bodies. He said that, because of its significant consequences to the economy, the state's antidegradation policy should ultimately be decided by the General Assembly.

Mr. Kane also said that because designating certain waters as Outstanding State Resource Waters or Outstanding Natural Resource Waters will have the practical impact of imposing even more onerous antidegradation standards on those waters than would otherwise apply, the General Assembly should also decide which state waters receive these special designations.

Mr. Kane stated that rulemaking concerning certain issues (including narrative criteria for sediments and use designations and antidegradation policy for wetlands) related to

the triennial review should be postponed until the issues become more fully developed under the Environmental Protection Agency's (EPA's) July 7, 1998, Advance Notice of Proposed Rulemaking.

Mr. Manders stated that the triennial review should be handled as an environmental matter and not as a political matter. He said a political solution probably would not provide a long term environmental solution.

Mr. Goodwin stated that he thought Mr. Kane's antidegradation remarks represented a "backwards philosophy." He stated the public does not want to see water quality degraded any more. He said water quality should not be considered as something that could be bought and sold.

Representative Kruzan said that this water quality policy should not be politicized. He said IDEM should establish the standards with legislative oversight.

The next person to testify was Scott Schutte, Senior Project Manager with the City of Indianapolis.⁴ Mr. Schutte said four water quality topics that were of special concern to municipalities included wet weather and E.coli, special designations and antidegradation, "reasonable potential to exceed," and wetlands.

Mr. Schutte proposed establishing tiered permits for Publicly Owned Treatment Works and use modifications during wet weather. Mr. Schutte also said that the original EPA statistical analysis that set water quality standards for E.coli was flawed. He asked the EQSC to recommend that IDEM be more responsive to municipalities on these issues.

Mr. Schutte also stated the triennial review process should include a component that evaluates the attainability of designated uses of certain state waters and adjust the use designation to reflect realistic expectations. He also said the draft rules concerning antidegradation would severely limit economic growth in many areas and asked IDEM to consider the effects of the rules and review the language of earlier draft rules.

Mr. Schutte continued by stating that "reasonable potential to exceed" was a procedural process by which effluent limitation requirements are determined. He said the IDEM draft rule adds many new requirements that will add to the number of effluent limitations. He said many of the effluent limitations apply to common materials that are naturally found in waters at levels that are higher than the discharge allowance. Mr. Schutte asked that IDEM reconsider this language and be willing to return the system to an objective test that only puts limits on true pollutants.

Mr. Schutte also stated that the draft rules would apply stream water quality standards to treatment wetlands that are used as a reasonable alternative to provide relief to treatment facilities or for pollution control of nonpoint source pollution. He said the rules would not allow these wetlands to be used for these purposes.

⁴A copy of Mr. Schutte's testimony is on file in the Legislative Information Center. See footnote 1.

The next person to testify was Rae Schnapp from the Hoosier Environmental Council. She stated that proposals for multiple use waters created a "giant loophole" that would allow degradation. She also proposed that Outstanding State Resource Waters should be maintained in their present high quality without degradation unless the new or increased discharge is accompanied by an overall improvement in water quality.

Ms. Schnapp also stated that Environmental protection was not at odds with economic development. She said high water quality will also attract growth to an area.

Senator Gard then asked Tom Cobb from IDEM to discuss issues concerning Indiana's environmental audit privilege. Mr. Cobb said that he had just received the fourth draft of an Indiana Attorney General opinion that addressed the four areas of concern EPA had with the Indiana law. He said that if the EPA accepted all of the Attorney General opinion, there would be no need for the legislature to amend the audit privilege statute. He said if that happened, Indiana would be the only state to resolve its environmental audit problems with the EPA with just an Attorney general opinion.

Representative Kruzan then stated that the other EQSC Subcommittees would report at the next EQSC meeting on September 10. Representative Kruzan adjourned the meeting at 5:04 P.M.